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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted] 20

RAYBESTOS-MANHATTAN, INC.,
*Petitioner,*

*vs.*

THE UNITED STATES.

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.**

CHARLES H. LEFEVRE,
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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1934

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# No. 850

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RAYBESTOS-MANHATTAN, INC.,

*Petitioner,*

*vs.*

THE UNITED STATES.

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## PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of the Raybestos-Manhattan, Inc., respectfully shows to this Honorable Court:

### Summary Statement of the Matter Involved.

The matter here involved is a determination as to whether or not, under the findings of fact in the case, your petitioner was rightly and legally assessed by the Treasury Department, Internal Revenue Service, with a stamp tax on sales or transfers of its capital stock under the provisions of Schedule A-3 of Section 800 of the Revenue Act of 1926 (44 Stat. 99, 100). Such a tax, in the sum of $7,620.24, was demanded of your petitioner on February 3, 1933, under notice to pay the same within ten days thereafter or to suffer the penalty by law provided (Exhibit E). Promptly after your petitioner paid on May 8, 1933, the

sum assessed, with $165.11 as interest thereon, under protest, it filed with the collector where the assessment was made and the tax so paid a claim for the refund of said sum and interest on the grounds that same had been illegally collected (Exhibit F). The Commissioner of Internal Revenue held that the tax was legally collected and rejected the claim (Exhibit G). The contentions of the parties were then carried to the Court of Claims of the United States (Suit No. 42580, filed January 9, 1934) and the judgment of that court, rendered March 4, 1935, upon special findings of fact made a part thereof, was the dismissal of the petition to that court, said court holding, as a conclusion of law, that your petitioner, the plaintiff therein, is not entitled to recover. A duly certified transcript of the record in said court accompanies this petition.

Your petitioner was created and organized in the year 1929, under the corporation laws of the State of New Jersey, for certain definite and specific purposes, as agreed to by all parties having any interest in businesses conducted by and property belonging to three business competitors, corporations, each organized and existing under the laws of a separate State, to-wit, for the following purposes: To acquire all of the business and assets and to assume all of the liabilities and obligations of each of said three corporations and thenceforth to handle the same for the ultimate benefit of the stockholders, or the persons then having capital invested in them, each such person, or stockholders, continuing to have in all matters so handled by your petitioner the same investment in dollars that he had in the part thereof formerly handled by one of the three corporations.

The plan for consolidating (Exhibits A, B, C, and D) said several interests, under a continuation of the then capital stock investments, through an exchange of your petitioner's original issue of capital stock, having then an

estimated and agreed-upon value equal to the estimated and agreed-upon value of the then combined outstanding stock of the said three corporations, for such outstanding stock, whereby the stockholders of the said three corporations were to cease to be such stockholders and at the same time were to become and be the original stockholders of your petitioner, was duly consummated.

The method by which your petitioner acquired the entire business and assets of one of said three corporations, of the Manhattan Rubber Manufacturing Company, a New Jersey corporation, subject to its liabilities and obligations, was a statutory merger (Special Findings of Fact 6).

The method by which your petitioner acquired the entire business and assets of the remaining corporations, of Raybestos Company, a Connecticut corporation, and of United States Asbestos Company, a Pennsylvania corporation, subject to their liabilities and obligations, was by proper deeds, assignments, etc., duly executed and delivered by said corporations (Special Findings of Fact 7 and 8).

Said tax, in the sum of $7,620.24, was assessed upon 381,012 shares of your petitioner's shares of capital stock issued direct by your petitioner to stockholders of Raybestos Company and United States Asbestos Company, and delivered in exchange for their shares in said companies, as the Commissioner of Internal Revenue treated said 381,012 shares as the consideration for the assets your petitioner acquired from said companies.

The Court of Claims decided that the transaction of consolidating the corporations, under the plan hereinbefore mentioned, was not a transaction whereby your petitioner acquired the stock of the stockholders of the Raybestos Company and the United States Asbestos Company, but a transaction whereby your petitioner took over the assets of those companies, in exchange for your petitioner's stock, and, accordingly, that there was such a transfer of said

companies' rights to receive your petitioner's shares as to make your petitioner liable for the payment of said tax.

Your petitioner still maintaining and contending that the said tax was illegally collected under the facts and circumstances of the case, because, in the first place, the consolidating corporations had no right to receive their own issued and outstanding shares of stock from the *bona fide* owners of said shares without such owners giving them the right, which they did not do, and because, in the second place, the consolidating corporations had no right to receive shares of stock given in exchange for such issued and outstanding shares without the *bona fide* owners of the latter giving them that right, which they did not do, your petitioner desires this Honorable Court to review the decision and judgment of the Court of Claims, this Court, in the case of *Gould* v. *Gould*, 245 U. S. 151, having said:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."

**Reasons Relied On for the Allowance of the Writ.**

1. The case of *Marconi Wireless Telegraph Co. of America* v. *Duffy*, decided May 31, 1921, by the District Court of the United States for the District of New Jersey, and reported in 273 Fed. 197, holds that when property of one corporation is sold to another corporation for stock of the vendee corporation, and the latter is credited for such of its stock as it issued to such stockholders of the vendor corporation as desired to receive same for surrendered certificates of stock in the vendor corporation, as though the shares had been issued directly to the vendor, a sale or

transfer stamp tax would properly attach and be collectible, because an actual transfer of the vendor's rights to receive the vendee's shares was involved in the transaction, yet said court makes reference in its opinion to a different conclusion reached in the case of *McClain* v. *Fleshmann*, 106 Fed. 880, 46 C. C. A. 15, wherein the settlements involved did not include agreements for a resale of stock nor conditions under which an agreement to that effect could be inferred for the purpose of extending the provisions of the Revenue Act, so as to justify application of sales or transfers stamp tax in addition to the applicable original issue stamp tax.

2. The case of *Minnesota Mining & Manufacturing Co.* v. *Willcuts*, decided August 15, 1932, by the District Court for the District of Minnesota, and reported in 2 F. Supp. 789, holds that no stamp tax liability on "sales or transfers" of stock results to a Minnesota corporation from the issue to its stockholders by a Delaware corporation of shares of the latter, share for share, upon the surrender by the stockholders of their shares in the Minnesota Corporation pursuant to a plan agreed to by the stockholders and contemplating (1) the organization of the Delaware corporation, (2) the transfer of all the assets of the Minnesota corporation to the new corporation, (3) as between the two corporations a proper agreement as to the consideration supporting such transfer, and (4) the protection of the individual rights of the various stockholders in the Minnesota corporation, so that on carrying out the plan each such stockholder would be as well off, financially, as he was before.

3. The case of *Shreveport-El Dorado Pipe Line Co.* v. *McGrawl*, decided February 11, 1933, by the Circuit Court of Appeals, Fifth Circuit, and reported in 63 F. (2d) 202, holds that a documentary stamp tax assessed under said Schedule A-3, Act of 1926, is not applicable to sales or trans-

fers of capital stock when the acts or transactions involved effect a change of corporate dress but do not effect a change of ownership in the stock, or interest dealt with, or when a new company is formed to take over the entire assets, properties, and franchises of an old company and to give to the stockholders of the old company shares of the new in lieu of cancelled shares of the old.

4. The case of *Westmoreland Coal* v. *MacLaughlin*, decided March 23, 1934, by the District Court for Eastern Pennsylvania, and reported in 8 F. Supp. 963, holds that where assets of a Pennsylvania corporation in consideration of issuance of total authorized capital stock of a Delaware corporation to stockholders of the Pennsylvania corporation, and the stock is issued direct to such stockholders under the controlling agreement, the transactions do not involve liability for a stamp tax on a theory of an implied transfer of a right to receive shares.

5. The case of *Consolidated Equities, Inc.*, v. *White*, decided July 17, 1934, by the District Court of Massachusetts, and reported in 7 F. Supp. 851, holds that where a broker sold voting trust certificates, representing shares in investment corporation and customer sent purchase price to broker who paid it to corporation, whereupon corporation issued shares to voting trustees who instructed transfer agent to issue to purchaser voting trust certificates, stamp tax on alleged transfer of shares is unlawfully exacted, since customer purchased only beneficial interest in stock and not legal title therein.

6. The case of *United States* v. *Brown Fence & Wire Co.*, decided January 31, 1935, by the District Court for the Northern District of Ohio, and not yet officially reported, but the only case cited in the Court of Claims' opinion, is in apparent contradiction to the positions held in some of the cases hereinbefore mentioned, yet in reality it adds little, if

anything, new to the crux of the points made in said other opinions. The Court of Claims cites it as supporting the conclusion that there was an outright purchase by your petitioner of the business and assets of the two corporations mentioned and that such corporations were the ones legally entitled to receive your petitioner's shares in the transaction, and that, in substance, there was a transfer by them of their right to receive such shares to their stockholders. While the opinion in the Ohio case does not set forth the facts of the case, the District Court interpreted said facts, whatever they may be, to show that the transactions involved included such a transfer of something from the Ohio company to its stockholders of legal interest, or title, of that company in the stock of the Delaware company sufficient to bring the decision in the case in line with the decision in the *Marconi Wireless Telegraph Company* v. *Duffy* case, *supra*.

7. The perplexing difficulty arising in the cases bearing upon a correct interpretation of the words, "rights to subscribe for or to receive such shares or certificates," as used in said Schedule A-3, is apparently regarding how the legal title to shares or certificates of stock may be recognized in the light of the facts of a particular transaction, and none of the cases dealing directly with that subject has yet been reviewed and clarified by this Honorable Court, while the decisions thereon in the District and the Circuit Courts appear to make a fairly clear distinction between cases where the legal title to the shares or certificates of stock dealt with is, as shown by the facts in the case, in the corporation and cases where the legal title to the shares or certificates of stock dealt with is, as shown by the facts in the case, in the stockholders, as this distinction in the majority of the adjudicated cases is determinative of the question whether or not a sale or transfer of legal title as contemplated by the Act actually occurred in fact or by necessary implication.

8. The Court of Claims predicated its opinion and judgment upon the assumption that the two corporations had the right to receive the 381,012 shares of your petitioner's original stock issue, and, by so assuming, it overlooked the controlling theory of the consolidating transaction, whereby your petitioner took over the property of the corporations under their approval and consent, and with the approval and consent of their stockholders, without changing the *pro rata* value of the financial investments, or interests, of the stockholders in that property.

9. The controlling theory of the consolidating transaction, as originally stated and evidenced, as submitted to both directors and stockholders for approval and sanction, and as ultimately consummated, was that the new stock was to be issued direct to the stockholders of the old corporations, or to the owners and depositors of the shares of the old corporations, upon the consummation of the plan and agreement, and any alternate theory at any time thereafter stated or sanctioned, as to deliver your petitioner's original shares to the corporations or upon their orders, was for procedural advantages and conveniences merely, and same was in no particular ever made use of, as the original controlling plan was carried through to full consummation.

10. The transfers of corporate property from the corporations to your petitioner by proper deeds, assignments, bills of sale, or other instruments duly executed and delivered by the corporations, were made in proper recognition of the ultimate financial interests involved and in proper consideration that your petitioner's original shares be issued direct to the stockholders of the corporations in exchange for their shares in the corporations, as provided for in the plan and agreement, and the conclusion formed by the Court of Claims that your petitioner was a party to a transaction whereby your petitioner took over the assets of the

Raybestos Company and the United States Asbestos Company, instead of your petitioner acquiring the stock of the stockholders of those companies, is not true and correct.

11. The stockholders of the Raybestos Company and the United States Asbestos Company never gave to those companies the right to receive either their shares in those companies or any original shares of your petitioner given in exchange for the shares belonging to said stockholders.

12. The conclusion of law formed by the Court of Claims rests upon a wrong construction of the controlling elements of the case and the judgment based thereon should be reversed.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full, and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 42580, Raybestos-Manhattan, Inc., a Corporation of the State of New Jersey, v. The United States of America, and that the said judgment of the said Court of Claims may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

RAYBESTOS-MANHATTAN, INC.,
By CHARLES H. LEFEVRE,
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